

**RULES
OF
TENNESSEE DEPARTMENT ENVIRONMENTAL AND CONSERVATION
WATER QUALITY CONTROL BOARD
DIVISION OF WATER POLLUTION CONTROL**

**CHAPTER 1200-4-1
GENERAL**

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1200-4-1-.01 DEFINITIONS:

- (1) For the purpose of these regulations, the following words shall have the same meanings ascribed to them in the Water Quality Control Act. They are: Administrator, areawide waste treatment management plan, Board, boat, Commissioner, construction, Department, Director, discharge of a pollutant, discharge of pollutants, discharge, Division, effluent limitation, industrial user, industrial wastes, member, new source, other wastes, owner or operator, person, pollutant, pollution, Regional Administrator, schedule of compliance, sewage, sewerage system, source, standard of performance, toxic effluent limitation, waters. In addition the word "Act" shall mean the Water Quality Control Act, the same being Sections 70-324 - 70-342, Tennessee Code Annotated.
- (2) The term "biological monitoring" shall mean the determination of the effects on aquatic life, including accumulation of pollutants in tissue, in receiving waters due to the discharge of pollutants (a) by techniques and procedures, including sampling of organisms representative of appropriate levels of the food chain appropriate to the volume and the physical, chemical, and biological characteristics of the effluent, and (b) at appropriate frequencies and locations.
- (3) The term "engineer" shall mean registered engineer where such registered engineer is required under these regulations. Where, under these regulations, a registered engineer is not required, the term "engineer" shall mean the person or his authorized representative responsible for the activity outlined in Section 70-330(b) of the Act.
- (4) The term "interstate agency" means an agency of two or more states established by or pursuant to an agreement or compact approved by the Congress, or any other agency of two or more states, having substantial powers or duties pertaining to the control of pollution as determined and approved by the Administrator.
- (5) The term "minor discharge" means any discharge which (a) has a total volume of less than 50,000 gallons on every day of the year, (b) does not affect the waters of any other State, and (c) is not identified by the commissioner, the Regional Administrator, or by the Administrator in regulations issued pursuant to section 307(a) of the Federal Water Pollution Control Act as a discharge which is not a minor discharge. If there is more than one discharge from a facility and the sum of the volumes of all discharges from the facility exceeds 50,000 gallons on any day of the year, then no discharge from the facility is a "minor discharge" as defined herein.

Authority: T.C.A. §70-328(a). **Administrative History:** Original Rule certified June 7, 1974. Amendment filed November 25, 1977; effective December 26, 1977.

1200-4-1.02 PURPOSE: The stated purposes of this Act in Section 70-325, second paragraph, shall not be construed as meaning that the State is obligated to achieve these purposes in the order that they appear; that is, the State may pursue one without having fully achieved all previous stated purposes.

Authority: T.C.A. §70-328(a). **Administrative History:** Original Rule certified June 7, 1974. Amendment filed November 25, 1977; effective December 26, 1977.

1200-4-1.03 WATER QUALITY CONTROL BOARD - COMPOSITION, CONFLICT OF INTEREST, DUTIES AND AUTHORITY, PROCEDURE:

(1) Composition.

- (a) The Water Quality Control Board will be composed of seven members as enumerated in Section 70-327 of the Act; three ex-officio members, and four citizen members.
- (b) Should an ex-officio member wish to designate a representative as provided in Section 70-327(a) of the Act, a letter to that effect must be filed with the Director prior to a Board meeting.
- (c) The citizen members appointed to the Board prior to enactment of the Water Quality Control Act shall continue to hold that office. The appointive citizen members shall hold office for staggered terms. The term of the representative of conservation interest shall expire in 1978; the term of the representative of the public-at-large in 1979; the term of the representative of municipality in 1980; and the representative of industry in 1981. The term of each appointive member shall expire on July 1. All subsequent appointments of citizen members shall be for a full four year term, provided that no appointive member shall be appointed to more than two consecutive four (4) year terms. Each appointive member shall be administered an oath of office at the beginning of the term of each. Each year an appointment will be made in the rotation cycle described.
- (d) The sentence "No member shall be appointed unless at the time of his appointment his employer is in compliance with the provisions of this Act as certified by the Commissioner," shall apply equally to persons appointed by the Governor to fill an unexpired term of a member who has died, resigned or has been removed for some reason.

(2) Conflict of Interest.

Section 70-327(e) of the Act makes provision for conflicts of interest(s). It shall apply only when a Board member by himself or in conjunction with other members exercises his quasi-judicial function; or where such a member is making a policy decision involving one particular municipality, industry, firm, or organization to which he is related as set out in Section 70-327(e) of the Act.

(3) Duties and Authority.

- (a) The Board shall hold public hearings for the purpose of classifying or reclassifying waters of the State; adopting, readopting, amending or revising standards of quality for State waters; adopting, revising, or repealing effluent standards and limitations; adopting, modifying, repealing and/or promulgating necessary rules and regulations; and to formulate and adopt a State Water Quality Plan pursuant to Section 70-328 of the Act. Any of the above stated actions may be conducted by the Board, or by one or more hearing examiner(s) appointed by the Commissioner.
- (b) In addition to the foregoing, the Board, or any member or members thereof, or a hearing officer designated by the Chairman, shall hold hearings to review orders of the Commissioner except as to the denial, terms, or conditions of permits, which shall be heard by the Permit Hearing Panel.

(Rule 1200-4-1-.03, continued)

- (c) Effluent standards and limitations shall be formulated in accordance with the following guidelines:
 - 1. For existing sources, other than publicly owned treatment works, effluent limitations shall be designed to require by July 1, 1977, application of the best practicable control technology currently available and application of the best available technology economically achievable in accordance with requirements of Section 301 (b)(2)(A), Federal Water Pollution Control Act, PL 92-500.
 - 2. For new sources, on effluent limited segments effluent limitations shall require the greatest degree of effluent reduction achievable through application of the best available demonstrated control technology which shall be new source performance standards, if available.
 - 3. For publicly owned treatment works, effluent limitations shall be designed to require by July 1, 1977, secondary treatment and by July 1, 1983, application of the best practicable waste treatment technology.
 - 4. Toxic effluent limitations shall be based on consideration of the toxicity of the pollutant, its persistence, its degradability, the usual or potential presence of the affected organisms in any waters, the importance of the affected organisms and the nature and extent of the effect of the toxic pollutant on such organisms.
 - 5. Pretreatment standards shall be designed to prevent the introduction into publicly owned treatment works of those pollutants that may interfere with, pass through, or otherwise be incompatible with such works.
 - 6. All effluent limitations or standards shall meet or exceed any minimum standards promulgated by the Administrator and currently effective under the Federal Water Pollution Control Act, P.L. 92-500 as amended or any subsequent applicable acts.
- (4) Procedures.
 - (a) Prior to a public hearing by the Board on any subject as detailed in (3)(a) above, the Director shall give notice twice in one newspaper of general circulation within the area of the State in which the water affected is located. The notice shall state the date, time, place and subject of the hearing. The first notice, shall be at least thirty (30) days in advance of the hearing, and a second notice shall be fifteen (15) days in advance of said hearing.
 - (b) Should any person, other than the Department or its representative, desire an audience before the Board upon the subject announced, that person should file a written notice with the Commissioner at the hearing.
 - (c) Every person who desires an audience, and who complies with the above provisions shall be granted not more than one (1) hour to orally present his views or argument.
 - (d) All matters which the Department or its representative, the Division of Water Quality Control, wishes to present the Board should be in writing and presented to the Board on or before the date of said hearing.
 - (e) Should any person wish to petition the Board to reclassify any State water(s) or interstate waters, or a change in any rule, regulation, effluent standard or limitation or water quality standards previously adopted by the Board, such person may petition the Board in writing. A petition should be typed on 8 1/2 x 11 sized paper, filed with the Commissioner in duplicate, addressed to the Board, and should state in a concise manner, the subject of the petition and

(Rule 1200-4-1-.03, continued)

reasons for a proposed change. The Board, or a four (4) member panel appointed by the Chairman or hearing examiners designated by the Chairman, shall set a hearing date as soon as possible, and shall hear oral argument from both petitioner and the Department with regard to petitioner's proposed change. The Board, or those sitting in behalf of the Board, or those sitting as hearing examiners, by a majority vote, shall decide whether the petition for a change in regulations and/or water classification is meritorious, and render its decision in writing to the petitioner within thirty (30) days after the hearing. Should said petition be of merit, the Board shall set a date for a public hearing on the matter, or may use the date of an already scheduled public hearing; but in any event, the Board shall give notice of a public hearing as set out in 4(a) above. For the purpose of this provision, a four (4) member panel shall be a quorum as set forth in Section 70-327(d) of the Act, a majority vote of which shall constitute a final determination of the Board. If, however, the petition is heard first by hearing examiners designated by the Chairman, a determination of whether said petition is meritorious will be conducted in the manner provided by Section 70-332(e) and (f) of the Act.

If the petition concerns the reclassification of an interstate water or waters, the Division of Water Quality Control shall meet and confer with appropriate Federal authorities on possible changes in the classification of such waters prior to any public hearing by the Board as provided above and in Section 70-328(d) of the Act. At a public hearing, Federal authorities may be present and heard by the Board.

(f) Definitions Pertaining to Procedure.

1. "Hearing Examiner" means a hearing examiner provided by the Administrative Procedures Division, Department of State, in accordance with T.C.A. Section 4-526(b).
2. "Administrative Judge" means a regular agency employee assigned to hear a contested agency case in accordance with T.C.A. 4-526(a).
3. "Board" means the Tennessee Water Quality Control Board, and, for the purpose of these Rules and Uniform Administrative Procedures Act, it is the AGENCY authorized by law to make rules and/or determine contested cases; except the Permit Hearing Panel is the agency authorized to review decisions of the Commissioner regarding the terms, conditions, issuance, or denial of permits.
4. "Department" means the Tennessee Department of Public Health.
5. "Commissioner" means the Commissioner of the Tennessee Department of Public Health.
6. "Respondent" means the Department, a member of the Department, an employee of the Department, or an Assistant Attorney General or other attorney acting in the representation of the Department as a party to a contested case.
7. "Petitioner" means a party to a proceeding adverse to the State.
8. "Hearing Officer" means a "hearing examiner" or an "administrative judge."
9. "Permit" means permits issued for wastewater discharges or activities pursuant to T.C.A. 70-330.

(g) Order of Proceedings

1. Order of Proceedings for the Hearing of Contested Cases When a Hearing Examiner is Hearing a Case with the Agency.

(Rule 1200-4-1-.03, continued)

- (i) Hearing is called to order by the hearing examiner.
- (ii) Hearing examiner introduces self and gives a very brief statement of the nature of the proceedings, including a statement of the hearing examiner's role of making legal rulings.
- (iii) Hearing examiner introduces the members of the Board or Panel and states that the final decision in the proceedings will be made by the Board or Panel and that they are the sole judges of the facts, the hearing examiner being excluded by law from deciding any question of fact when hearing the proceedings with the Board or Panel; however, it shall be the duty of the hearing examiner to advise the Board or Panel as to all questions of law in the case;
- (iv) Hearing examiner then calls on the Petitioner asking if he is represented by counsel and if so, counsel is asked to introduce himself. The hearing examiner then introduces the Respondent's counsel and any other officials who may be present at the hearing.
- (v) Hearing examiner asks each party if each is ready.
- (vi) The hearing examiner then presents a brief explanation, primarily for the benefit of the Petitioner and his counsel, of how the hearing will proceed with respect to the presentation of proof including a statement that cross-examination and re-direct will be completely open and a statement of the admissibility standards for evidence in the hearing.
- (vii) The hearing examiner swears all the witnesses.
- (viii) The Petitioner is asked if he wishes to exclude the Respondent's witnesses from the hearing room so that no witness for the Respondent hears the other's testimony. The Respondent is given the same option with regard to the Petitioner's witnesses.
- (ix) Any preliminary motions, stipulations, or agreed orders are entertained.
- (x) Opening statements are allowed by both the Respondent and the Petitioner.
- (xi) The party assuming the affirmative of the issue calls his witnesses and questioning proceeds as follows:
 - (I) Affirmative party proceeds on direct examination.
 - (II) Responding party cross-examines.
 - (III) Affirmative party redirects.
 - (IV) Responding party recross-examines.
 - (V) Board or Panel questions.
 - (VI) Cross-examination by Responding party's attorney.
 - (VII) Redirect by Affirmative party.

(Rule 1200-4-1-.03, continued)

Questioning proceeds as long as is necessary to provide all pertinent testimony.

(xii) Other party calls his witnesses and questioning proceeds as follows:

(I) Responding party proceeds on direct examination.

(II) Affirmative party cross-examines.

(III) Responding party redirects.

(IV) Affirmative party recross-examines.

(V) Board or Panel questions.

(VI) Cross-examination by Affirmative party's attorney.

(VII) Redirect by Responding party.

Questioning proceeds as long as is necessary to provide all pertinent testimony.

(xiii) Respondent and Petitioner are allowed to call appropriate rebuttal and rejoinder witnesses with examination proceedings as outlined above.

(xiv) Closing arguments are allowed to be presented by the Respondent and by the Petitioner.

(xv) The hearing examiner takes over and closes the hearing.

(xvi) Hearing examiner prepares to turn proceedings over to the Board or Panel by representing the original issues of the contested case, admonishing them to disregard evidence excluded, and reminding that the hearing examiner can take no part in any finding of fact although he can advise as to the legal sufficiency of the evidence.

(xvii) The hearing examiner then asks the Board or Panel if it wishes to take the case under advisement or go into executive session and decide the case at that time.

(I) If the Board or Panel chooses to take the case under advisement, the hearing examiner advises the Board or Panel that, pursuant to T.C.A. 70332(f), it must reach a decision and issue an order within thirty (30) days; additionally, the hearing examiner advises the Board or Panel that it must establish the date and place to reconvene for the purpose of reaching a decision. Upon the establishment of the date to reconvene, the hearing examiner closes the hearing. The Board or Panel reconvenes on the date established, decides the case, and relays the decision to the parties. The hearing examiner again takes over and hears any offers of excluded proof for the record.

(II) If the Board or Panel, chooses to go into executive session, the hearing examiner advises the chairman of the Board that he will turn the proceedings over to the chairman until such time as the Board or Panel reaches its decision. The Board or Panel then deliberates and reaches a decision which is relayed to the parties. The hearing examiner again takes over, and hears any offers of excluded proof for the record.

(Rule 1200-4-1-.03, continued)

2. Order of Proceedings for the Hearing of Contested Cases When a Hearing Examiner or Administrative Judge is Hearing the Case Alone:
 - (i) Meeting is called to order by the hearing officer.
 - (ii) Hearing officer introduces self and gives a very brief statement of the nature of the proceedings, including statement of the hearing officer's role of making legal rulings and findings of fact which will be incorporated in a proposal for decision which will be served on all parties that each party adversely affected by the proposed decision will be given an opportunity to file exceptions and present argument in writing to the Board or Panel itself before the members personally decide the case on record.
 - (iii) Hearing officer then calls on the Petitioner asking if he is represented by counsel and if so, counsel is asked to introduce himself. The hearing officer then introduces the Respondent's counsel and any other officials which may be present at the hearing.
 - (iv) Hearing officer asks each party if he is ready.
 - (v) The hearing officer then presents a brief explanation, primarily for the benefit of the Petitioner and his counsel, of how the hearing will proceed with respect to the presentation of proof including a statement that cross-examination and re-direct will be completely open and a statement of the admissibility standards for evidence in the hearing.
 - (vi) The hearing officer swears all the witnesses.
 - (vii) The Petitioner is asked if he wishes to exclude the Respondent's witnesses from the hearing room so that no witness for the Respondent hears the other's testimony. The Respondent is given the same option with regard to the Petitioner's witnesses.
 - (viii) Any preliminary motions, stipulations, or agreed orders are entertained.
 - (ix) Opening statements are allowed by both the Respondent and the Petitioner.
 - (x) The party assuming the affirmative of the issue calls his witnesses and questioning proceeds as follows:
 - (I) Affirmative party proceeds on direct examination.
 - (II) Responding party cross-examines.
 - (III) Affirmative party redirects.
 - (IV) Responding party recross-examines.Questioning proceeds as long as is necessary to provide all pertinent testimony.
 - (xi) Other party calls his witnesses and questioning proceeds as follows:
 - (I) Responding party proceeds on direct examination.
 - (II) Affirmative party cross-examines.

(Rule 1200-4-1-.03, continued)

(III) Responding party redirects.

(IV) Affirmative party recross-examines.

Questioning proceeds as long as is necessary to provide all pertinent testimony.

(xii) Respondent and Petitioner allowed to call appropriate rebuttal and rejoinder witnesses with examination proceedings as outlined above.

(xiii) Closing arguments are allowed to be presented by the Respondent and by the Petitioner.

(xiv) The hearing officer tells the parties that he will consider all the evidence in the case including supporting written materials to support legal objections that were made, and that a proposal for decision will be written and served on the parties.

(xv) The hearing officer explains to the parties that a written transcript of the testimony presented, including exhibits and written materials to support any legal objections made, together with a proposed decision will be prepared and submitted to the Board or Panel and to both parties. Thereafter, the party or parties adversely affected may submit, in writing, objections or exceptions to the proposed decision to the Board or Panel within 30 days of receipt of the transcript and proposed decision as provided in T.C.A. Section 70-332(e). Thereafter, either or both parties may present oral argument before the Board or Panel upon giving notice to the Board, or Panel, which notice of a desire to be heard must be submitted together with the party's exceptions. Upon hearing argument and/or considering the exceptions filed and the entire transcript of the proceedings before the hearing officer, the Board or Panel shall close the hearing. Within 30 days after the close of the hearing, as provided in T.C.A. Section 534313(f), the Board or Panel shall render a written decision in accordance with the provisions of T.C.A. Section 4-519.

(xvi) The hearing officer adjourns the hearing.

(h) Pre-Hearing Conference

In any action set for hearing the Board, Panel, or Hearing Examiner as the case may be, may, if the parties agree, direct the parties and/or the attorneys for the parties to appear before a hearing examiner, Administrative Judge, or the Board, or Panel for a conference to consider simplification of the issues, amendments to the pleadings, admissions of fact and such matters as may aid in the disposition of the action consistent with T.C.A. Section 4-514(d). All matters settled, stipulated, or ordered at any such conference shall be reduced to writing which shall be put in the form of an order and made part of the record.

(i) Pleadings

1. Actions by the Commissioner, Tennessee Department of Public Health, for which an appeal may be made:

(i) Any person who is denied a Permit, or who disagrees with the conditions imposed in his Permit, shall be given an opportunity for a hearing before the Permit Hearing Panel as provided in Section 70-332. The issuance of the Permit shall include a statement citing the statutory authority for such issuance and a statement informing the Permit Grantee of his statutory right to obtain a hearing regarding

(Rule 1200-4-1-.03, continued)

the provisions established in the Permit by petitioning the Panel pursuant to the regulations adopted therefor. The denial of the Permit shall detail the statutory authority for such denial; the reasons for such denial; required action and procedures for obtaining a Permit; and shall include a statement informing the person affected of his statutory right to a hearing. Both the issuance and the denial of a Permit shall state that any request for a hearing must be made by written petition to the Commissioner, Tennessee Department of Public Health, within thirty (30) days after receipt of notice from the Commissioner of the Permit issuance or denial.

- (ii) In accordance with Section 70-328, the Commissioner may modify or revoke any Permit; however, such action must be preceded by notice and opportunity for hearing. The Commissioner shall first notify the Permittee of his intent to modify or revoke the Permit, stating the reasons for such revocation or modification, and citing the statutory authority for such action. Such notice must include a statement informing the Permittee that he may obtain a hearing by submitting a written Petition to the Commissioner, Tennessee Department of Public Health within the time period provided.
- (iii) In accordance with Section 70-333(a), the Commissioner may cause a written Complaint to be served upon an alleged violator or violators. The Complaint shall specify the provision or provisions of Sections 70-324 - 70-342 or regulation or order alleged to have been violated or about to be violated, and the facts alleged to constitute a violation thereof and may order that necessary corrective action be taken within a reasonable time to be prescribed in such order. The issuance of the Complaint will include a statement informing the person affected that he may obtain a hearing by submitting a written Petition to the Commissioner, Tennessee Department of Public Health, within thirty (30) days after receipt of such Complaint, said petition being filed pursuant to the regulations adopted therefor. The Complaint will be delivered by return receipt mail or served personally by the Commissioner, or any person designated by him, provided that such person making personal service shall return an affidavit making oath as to the time and place of service.
- (iv) In accordance with Section 70-337(a), and Regulation 1200-4-1-.04(2)(a)3., the Commissioner, Tennessee Department of Public Health may initiate proceedings for assessment of a civil penalty by the Board by serving a Memorandum of Assessment on the violator. The issuance of the Memorandum of Assessment will inform the person affected of the amount of the proposed Assessment and a date for appearance before the Board to hear the matter of the Assessment. The Memorandum of Assessment must be delivered by return receipt mail or delivered personally by the Commissioner or a person designated by him, in which case the Commissioner or person making service shall return an affidavit making oath as to the time and place of service.
- (v) In accordance with Section 70-338, the Commissioner, Tennessee Department of Public Health, may assess the liability of any violator for damages to the State. The Memorandum of Assessment shall detail the damages to the State; cite the statutory authority for making such assessment; and shall specify the pollution caused or the rule, regulation, standard of water quality, Permit requirement, or order alleged to have been violated or otherwise not complied with because of failure or neglect. The issuance of the Memorandum of Assessment will inform the person affected that he may obtain a hearing regarding the Assessment by submittal of a written Petition to the Commissioner, Tennessee Department of Public Health, within thirty (30) days after receipt of such Memorandum of

(Rule 1200-4-1-.03, continued)

Assessment, said Petition being filed pursuant to the regulations adopted therefor. The Memorandum of Assessment will be delivered by return receipt mail or served personally by the Commissioner, or any person designated by him, provided that such person making personal service shall return an affidavit making oath as to the time and place of service.

- (vi) In accordance with Section 70-340(a), any person may file with the Commissioner a complaint against any person allegedly violating any provisions of Sections 70-324 - 70-342, to which the Commissioner must respond within ninety (90) days with some action or determination; either the complainant or the alleged violator may appeal the Commissioner's action or determination. Notice from the Commissioner to the complainant and the alleged violator of his action or determination shall detail the reasons for same and shall include a statement informing the person affected of his statutory right to appeal the Commissioner's action or determination by petitioning the Board pursuant to the regulations adopted therefor. Said notice shall also state that any such Petition must be filed with the Board within thirty (30) days after receipt of notice of the Commissioner's action or determination.

2. Form of Petition for Hearing

- (i) Any person desiring a hearing relative to the actions by the Commissioner outlined above must file a Petition within the time indicated above requesting such hearing. Such Petition must be in writing upon 8 1/2 x 11 inch paper, filed with the Commissioner in duplicate, addressed to the Tennessee Water Quality Control Board, or the Permit Hearing Panel when appropriate, styled, captioned, and must state in numbered paragraphs the contentions of the Petitioner. If said Petition is not filed within the time allowed, it shall not be heard.
- (ii) The party desiring a hearing may in his Petition generally deny all allegations made, or admit in part and deny in part. A party may request pre-hearing discovery as provided in T.C.A. 4-516-517.

3. Notice of Hearing

- (i) In accordance with T.C.A. Section 70-332, upon receipt of a written Petition requesting a hearing on action taken, the Commissioner shall give the Petitioner thirty (30) days written notice of the time, place and nature of the hearing, and such hearing shall be held within the time provided in T.C.A. 70-332(a). The notice of such hearing shall include a statement informing the party affected of his right to discovery; the notice shall also cite the statutory authority under which the hearing is to be held. In the event a person affected petitions, without representation by legal counsel, for a hearing, the notice shall inform the person of his right to be represented by legal counsel.
- (ii) The conduct of any such hearing shall be in accordance with T.C.A. Section 70-332, Uniform Administrative Procedures Act, and Administrative Rules of the Board.

4. Place for Filing

All Petitions for hearing will be filed in duplicate with the Commissioner, Tennessee Department of Public Health. All subsequent pleadings, motions and notices must be filed in the location as follows:

(Rule 1200-4-1-.03, continued)

- (i) Where the hearing is before the Water Quality Control Board itself, the Permit Hearing Panel itself, or persons acting in behalf of the Board, or Panel, all such pleadings and motions shall be filed with the Commissioner, Tennessee Department of Public Health.
- (ii) Where the hearing is before a hearing examiner provided by the Secretary of State, all such pleadings and motions shall be filed with the Administrative Procedures Division.
- (iii) Where the hearing is before an Administrative Judge, all such pleadings and motions shall be filed with the Administrative Judge hearing the case.

5. Amendment to Pleadings

The Respondent may amend the Memorandum of Assessment or the Complaint under Section 70-331(a) prior to the filing of a Petition by serving an amended Memorandum of Assessment or Complaint in the manner prescribed for serving the originals. The Respondent may amend after the filing of a Petition only upon motion to and order of the Board, Panel, Hearing Examiner or Administrative Judge. The Petitioner may amend his Petition if he does so within the original time period provided by law and in the same format as the original Petition. Thereafter, an amendment may be perfected only upon motion to and order of the Board, Panel, Hearing Examiner or Administrative Judge.

(j) Default and Uncontested Proceedings

1. Default

- (i) The failure or refusal of a party to timely appear at a hearing on the merits after due notice thereof, is cause for holding such party in default and said order of default may thereupon be entered into the record.
- (ii) The Board or Panel shall serve upon all parties written notice of entry of default for failure to appear and the defaulting party, no later than five days after such service of notice, may file a motion requesting that his default be set aside for good cause shown and stating the grounds relied upon. The Board shall make such orders in regard to such motion as it in its absolute discretion may deem appropriate.

2. Effect of Entry of Default

- (i) Upon entry into the record of the default of the Respondent, the relief sought by the Petition shall be granted.
- (ii) Upon entry into the record of the default of any Petitioner, the matter shall be tried as uncontested as to such Petitioner.

3. Uncontested Proceeding

When the matter is tried as uncontested, the Respondent has the burden of proof of affirmative allegations sufficient to state a prima facie case. The Board or Panel may accept any other relevant evidence which it may deem desirable.

(k) Commencement of Action

(Rule 1200-4-1-.03, continued)

An action is commenced for the purposes of discovery under these rules, when the Department receives or initiates a Petition for a hearing or rehearing in a contested case.

(l) Discovery

The rights of discovery include:

1. Depositions.
2. Discovery and production of documents and physical evidence.
3. Admission of facts and genuineness of documents.

All questions concerning discovery shall be heard by the Board, the Panel, the Hearing Examiner or Administrative Judge assigned to hear the case.

(m) Depositions Pending Action

1. When Depositions May Be Taken

Any party may take the testimony of any person, including a party, by deposition upon oral examination for the purpose of discovery or for use as evidence in the hearing or for both purposes. After commencement of action, the deposition may be taken without leave of the Board, the Panel, the Hearing Examiner or the Administrative judge except that leave, granted with or without notice must be obtained if notice of the taking is served by the Respondent within 20 days after commencement of the action. The attendance of witnesses may be compelled by the use of subpoena.

2. Scope of Examination

Unless otherwise ordered by the Board, the Panel, the Hearing Examiner or Administrative Judge, the deponent may be examined regarding any matter, not privileged, which is relevant to the subject matter involved in the pending hearing, whether it relates to the claim or defense of the examining party or to the claim or defense of any other party; including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts. It is not ground for objection that the testimony will be inadmissible at the hearing if the testimony sought appears reasonably calculated to lead to the discovery of admissible evidence.

3. Examination and Cross-Examination

Examination and cross-examination of deponents may proceed as provided in T.C.A. Section 4-515 and as specified in these rules.

4. Use of Depositions

- (i) At the hearing, any part or all of the deposition, so far as admissible under T.C.A. Section 4-515, may be used against any party for any purpose who was present or represented at the taking of the deposition or who had due notice thereof.
- (ii) If only part of the deposition is offered in evidence by a party, an adverse party may require him to introduce all of it which is relevant to the part introduced, and any party may introduce any other parts.

(Rule 1200-4-1-.03, continued)

- (iii) Substitution of parties does not affect the right to use depositions previously taken; and when any hearing proceeding has been dismissed and another proceeding involving the same subject matter is afterward brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the former proceeding may be used in the latter as if originally taken therefor.

5. Objections to Admissibility

Subject to the provisions of paragraphs (n) and (g), objections may be made at the hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.

6. Effect of Taking or Using Depositions

At the hearing any party may rebut any relevant evidence contained in a deposition whether introduced by him or by any other party.

(n) Persons Before Whom Depositions May Be Taken

Depositions shall be taken before any Notary or other officer qualified by law to administer oaths.

(o) Stipulations Regarding the Taking of Depositions

If the parties so stipulate in writing, depositions may be taken before any person, at any time, or place, upon any notice, and in any manner, and when so taken may be used as other depositions.

(p) Depositions Upon Oral Examination

1. Notice of Examination: Time and Place.

The party desiring to take the deposition of any person upon oral examination shall give notice in writing to every other party to the hearing proceeding. The notice shall be served on the other parties at least five days beforehand when the deposition is to be taken in the county in which the hearing is pending. When the deposition is to be taken out of the county, at least seven days notice shall be given. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs. On motion of any party upon whom the notice is served, the Board, the Panel, the Hearing Examiner or Administrative Judge may for cause shown enlarge or shorten the time.

2. Orders for the Protection of Parties and Deponents.

After notice is served for taking a deposition by oral examination, upon motion seasonably made by any party or by the person to be examined and upon notice and for good cause shown, the Board, the Panel, the Hearing Examiner or Administrative Judge may make an order that the deposition shall not be taken, or that it may be taken only at some designated place other than that stated in the notice, or that certain matters shall not be inquired into, or that the scope of the examination shall be limited to certain matters, or that the examination shall be held with no one present except the parties to the hearing proceeding and their officers or counsel, or that after being sealed the deposition shall be opened only by order of the Board, Panel, the Hearing Examiner or Administrative

(Rule 1200-4-1-.03, continued)

Judge, or that secret processes, developments, or research need not be disclosed, or that the parties shall simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the Board, the Panel, the Hearing Examiner or Administrative Judge; or the Board, the Panel, the Hearing Examiner or Administrative Judge may make any order which justice requires to protect the party or witness from annoyance, embarrassment or oppression.

3. Record of Examination; Oath; Objections.

The officer before whom the deposition is to be taken shall put the witness on oath and shall personally, or by someone acting under his direction and in his presence, record the testimony of the witness. The testimony shall be taken stenographically or recorded (mechanically or electrically) and transcribed unless the parties agree otherwise. All objections made at the time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct or any party, and any other objection to the proceedings shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to objections made.

4. Motion to Terminate or Limit Examination.

At any time during the taking of the deposition, on motion of any party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass or oppress the deponent or party, the Board, the Panel, the Hearing Examiner or Administrative Judge may order the termination of the taking of the deposition, or may limit the scope and manner of taking the deposition. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order.

5. Submission to Witness; Changes; Signing.

When the testimony is fully transcribed the deposition shall be submitted to the witness for examination and shall be read to or by him, unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may be used as fully as though signed, unless on a motion to suppress the Board, the Panel, the Hearing Examiner or Administrative Judge holds that the reasons for the refusal to sign require rejection of the deposition in whole or in part.

6. Certification and Filing by Officer; Copies; Notice of Filing.

- (i) The officer before whom the deposition is taken shall certify on the deposition that the witness was duly sworn by him and that the deposition is a true record of the testimony given by the witness. He shall then securely seal the deposition in an envelope endorsed with the title of the action and marked "Deposition of (here insert name of witness)" and shall promptly file it with the Administrative Procedures Division of the Department of State when it is to be heard by a Hearing Examiner or file it with the Board or Panel when the hearing proceeding will take place before them or an Administrative Judge.

(Rule 1200-4-1-.03, continued)

- (ii) The party requesting the taking of depositions shall bear the costs involved, including transcribing and reproduction costs.
 - (iii) Upon payment of reasonable charges therefor, the Board, the Panel, the Hearing Examiner or Administrative Judge shall furnish a copy of the deposition to any party or the deponent.
 - (iv) When the deposition is filed, notice shall promptly be given to all parties.
- (q) Effect of Errors and Irregularities in Depositions.

1. As to Notice.

All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice.

2. As to the Qualifications of the Hearing Officer Taking the Deposition.

Objection to taking a deposition because of the qualifications of the Officer before whom it is to be taken is waived unless made before taking of the deposition begins or as soon thereafter as the qualifications become suspect or could have become suspicious with reasonable diligence.

3. As to Taking of Deposition.

- (i) Objections to the competency, relevancy, or materiality of testimony are not waived by the failure to make them before or during the taking of the deposition, unless the reason for the objection is one which might have been obviated or removed if presented at that time.
- (ii) Errors and irregularities occurring during the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties and errors of any kind which might be obviated, removed or cured if promptly presented, are waived unless reasonable objection thereto is made at the taking of the deposition.

4. As to Completion and Return of Deposition.

Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, endorsed, transmitted, filed, or otherwise dealt with by the officer are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained.

(r) Discovery and Production of Documents and Things for Inspection, Copying, or Photographing.

Upon motion of any party and upon notice to all other parties and subject to the provisions of paragraph (p), the Hearing Examiner, Administrative Judge, Board, or Panel, hearing the case may: (1) order any party to produce and permit the inspection and copying or photographing, by or on behalf of the moving party, of any designated documents, papers, books, accounts, letters, photographs, objects or tangible things, not privileged, which constitute or contain evidence relating to any of the matters within the scope of the examination permitted by paragraph (1) and which are in his possession, custody or control; or (2) order any party to permit entry upon designated land or other property in his possession or control for the purpose

(Rule 1200-4-1-.03, continued)

of inspecting, measuring, surveying or photographing the property or any designated object or operation thereon within the scope of the examination. The order shall specify the time, place and manner of making the inspection and taking the copies and photographs and may prescribe such terms and conditions as are just.

(s) Admission of Facts and of Genuineness of Documents.

After commencement of a contested case, a party may serve upon any other party a written request for the admission by the latter of the genuineness of any relevant documents described in and exhibited with the request or of the truth of any relevant matters of fact set forth in the request. Copies of the document shall be served with the request unless copies have already been furnished. Each of the matters of which an admission is requested shall be deemed admitted unless within a period designated in the request, not less than fifteen (15) days after service thereof or within such shorter or longer time as the Board, the Panel, or Hearing Officer may allow on motion and notice, the party to whom the request is directed serves upon the party requesting the admission either: (1) a sworn statement denying specifically the matters of which an admission is requested or setting forth in detail the reasons why he cannot truthfully admit or deny those matters; or (2) written objections on the ground that some or all of the requested admissions are privileged or irrelevant or that the request is otherwise improper in whole or part, together with a notice of hearing the objections at the earliest practicable time. If written objections to a part of the request are made, the remainder of the request shall be answered within the period designated in the request. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party deny only a part or a qualification of a matter of which an admission is requested, he shall specify so much of it as is true and deny only the remainder. Any admission made by a party pursuant to such request is for the purpose of the pending action only and neither constitutes an admission by him for any other purpose nor may be used against him in any other proceeding.

(t) Refusal to Make Discovery; Consequences.

1. Refusal to Answer

If a party or other deponent refuses to answer any question propounded upon oral examination, the examination shall be completed on other matters or adjourned, as the proponent of the question may prefer. Thereafter, on reasonable notice to all persons affected thereby, the proponent may apply to the Board which may apply to the circuit or chancery court of the county of such person's residence, in conformity with T.C.A. Section 4-516(b), for an order to compel the giving of the testimony

2. Failure to Comply with Order.

If a party or other witness refuses to be sworn, disobeys a lawful Board or Panel subpoena or discovery order or refuses to testify in any manner regarding a lawful Board or Panel interrogation, the Board or Panel may apply to the Chancery Court of Davidson County or the chancery court of the county of such person's residence for an order to compel compliance. If the disobedience is found to be unlawful, the court is directed by law to enter an order requiring compliance. Disobedience with such an order may be punished as contempt of court as is provided in judicial proceedings. (See T.C.A. Section 4-516(b).).

(u) Subpoena.

1. For Attendance of Witnesses Form: Issuance.

(Rule 1200-4-1-.03, continued)

Every subpoena shall be issued by the Hearing Examiner or Administrative Judge assigned to hear the case or by the Board or Panel. It shall state the name of the Board and the title of the action, and shall command each person to whom it is directed to attend and give testimony at the time and place and for the party therein specified. The Hearing Examiner, Administrative Judge, Panel, or Board shall issue a subpoena or a subpoena for the production of documentary evidence signed but otherwise in blank, to a party requesting it who shall fill it in before service.

2. For Production of Documentary Evidence.

A subpoena may also command the person to whom it is directed to produce the books, papers, documents, or tangible things designated therein or other objects as may be necessary and proper for the purposes of the proceeding; but the Hearing Examiner, Administrative Judge, Panel or Board, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance therewith, may (i) quash or modify the subpoena if it is unreasonable and oppressive or (ii) condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things.

3. Service.

A subpoena may be served by return receipt mail or the witness may acknowledge personal service in writing on the subpoena, after delivering or offering to deliver a copy thereof to the person to whom it is directed. Subpoenas may be served anywhere within the State of Tennessee.

4. Subpoena for Taking Depositions; Place of Deposition.

A subpoena for taking depositions may be issued by the Hearing Examiner or the Administrative Judge assigned to hear the case or by the Board, or Panel, as provided in T.C.A. Section 4-516. If the subpoena commands the person to whom it is directed to produce designated books, papers, documents, or tangible things which constitute or contain evidence relating to any of the matters within the scope of the examination, the subpoena will be subject to the provisions of paragraph (p)2. and paragraph (u)2.

5. Subpoena for a Hearing; Personal Attendance.

At the request of any party subpoenas for attendance at a hearing shall be issued by the Hearing Examiner or Administrative Judge assigned to hear the case or the Board, or Panel, and such subpoena may be served at any place within the State.

6. Contempt.

Disobedience to a lawful subpoena or refusal to be sworn or to answer as a witness in any manner may be subject to contempt of court as provided in T.C.A. Section 4-516(b) and 70-332(d).

(v) Evidence in Hearings.

In all Board or Panel hearings, the testimony of witnesses shall be open except as otherwise provided by these rules. Upon the request of a party, witnesses may be excluded prior to their testimony.

(w) Examination and Cross-Examination.

(Rule 1200-4-1-.03, continued)

Examination and cross-examination of any witness or party shall follow procedures acceptable to Tennessee courts.

(x) Record of Excluded Evidence.

1. In a hearing before a Hearing Examiner with the Board or Panel present, if an objection to offered evidence is sustained by the Hearing Examiner, the examining attorney may make a specific offer of what he expects to prove by that evidence. The offer of proof will be accepted by the Hearing Examiner after the hearing is completed and the Board or Panel has reached a final decision.
2. In a hearing held before a Hearing Examiner sitting alone the offer of proof will be taken during the hearing but not submitted to the Board or Panel as part of the record. The Hearing Examiner or Administrative Judge may add such other or further statement as clearly shows the character of the evidence, the form in which it was offered, the objection made, and the ruling thereon.
3. The Hearing Examiner or Administrative Judge shall be the sole judge of legal issues arising during the hearing but under no circumstances will he take part in any determination of fact.

(y) Affirmation in Lieu of Oath.

Whenever under these rules an oath is required to be taken, a solemn affirmation may be accepted in lieu thereof.

(z) Record.

1. The record taken of the proceeding shall be preserved for four (4) calendar months for purposes of transcription for appeal.
2. The record in a contested case shall include:
 - (i) all applications, pleadings, motions, intermediate rulings and exhibits and appendices thereto;
 - (ii) evidence received or considered, stipulations and admissions;
 - (iii) a statement of matters officially noticed;
 - (iv) questions and offers of proof, objections, and rulings thereon;
 - (v) any proposed findings or decisions and exceptions;
 - (vi) any decision, opinion, or report by the agency or the officer presiding at the hearing;
 - (vii) all staff memoranda or data submitted to the Hearing Officer or members of the agency in connection with their consideration of the case.

(aa) Decisions in Contested Cases.

Any decision or Order rendered by a Hearing Officer, the Panel, or the Board shall be in writing on 8 1/2 inch x 11 inch paper, supported by findings of fact and conclusions of law, and in the form of a memorandum. The Technical Secretary will be responsible for the preparation of the

(Rule 1200-4-1-.03, continued)

memorandum and for certification by the Commissioner where the Board or Panel renders a decision or issues an Order. The memorandum should be captioned: "Before the Tennessee Water Quality Control Board," or "Before the Permit Hearing Panel of the Tennessee Water Quality Control Board," and styled with the name of the party or parties involved.

Authority: T.C.A. §70-328(a). **Administrative History:** Original Rule certified June 7, 1974. Amendment filed November 25, 1977; effective December 26, 1977.

1200-0-1-.04 COMMISSIONER'S RESPONSIBILITIES AND AUTHORITY:

(1) Responsibilities

- (a) The responsibilities of the Commissioner are set out in detail in Section 70-329 of the Act. In general, he is "to exercise supervision and control over the quality of all State waters, to administer and enforce all laws relating to pollution of such waters, and to administer and enforce this Act, and all standards, policies, rules and regulations promulgated thereunder."
- (b) Any delegation by the Commissioner to the Director pursuant to Section 70-329(n) of the Act must be in writing.

(2) Authority

- (a) Pursuant to the responsibility placed upon the Commissioner, he is granted six (6) separate remedies for violations of this Act.

1. Complaints and Orders

Any complaint issued by the Commissioner pursuant to Section 70-331 of the Act shall comply in form with the Tennessee Rules of Civil Procedure, Section 10; and with Section 5.02 with regard to Service of Process. The complaint shall be typed on 8 1/2 x 14 inch sized paper, captioned "The Department of Public Health of the State of Tennessee," styled with the name of the party or parties involved and titled "Complaint." The order may follow the complaint, or be attached as a separate document. All complaints and orders must be signed by the Director, for the Commissioner, with the exception of emergency orders. Emergency orders shall be signed by the Commissioner and countersigned by the Director, and may be issued without an accompanying complaint, however, emergency orders shall recite the nature of the emergency, explain why a prior hearing cannot be held, and inform the recipient of the opportunity for a hearing provided by Section 70-332(h) of the Act.

2. Assessment of Damages

Whenever the Commissioner assesses the liability of a violator of one or more of the provisions of the Act, the damages to the State may include only those set out in Section 70-338 of the Act. The form will be that of a memorandum typed on 8 1/2 x 14 inch sized paper stating specifically events leading to damage to the State, probable cause, and conclusions drawn. Damages should be itemized and totaled, and the violator ordered to pay. Said assessment must be signed by the Director for the Commissioner, or by the Commissioner himself.

3. Civil Penalties

Whenever the Commissioner institutes proceedings before the Board for assessment of a civil penalty pursuant to Section 70337(a) of the Act he must do so in the form of a memorandum typed on 8 1/2 x 14 inch sized paper stating specifically those facts giving

(Rule 1200-4-1-.04, continued)

rise to the proposed assessment and his consideration of the factors determinative of its amount. The violator must be ordered to appear before the Board for a hearing to determine whether there should be an assessment and if so, its amount. The Memorandum must be signed by the Commissioner.

4. Criminal Penalties

Prior to the issuance of a warrant for the arrest and prosecution of a violator of this Act, the Commissioner shall authorize in writing a member or members of the Division to apply for a warrant or warrants for a specific charge stated therein, and pursue the same through to termination.

5. Injunctions

The complaint and accompanying plea for injunctive relief shall conform with the Rules of Tennessee Civil Procedure. Neither the Board nor the Commissioner need take administrative action prior to a plea for an injunction. The Board or the Commissioner may file a Complaint and a plea for an injunction to enforce any order issued.

6. Other Remedies

Section 70-340(b) of the Act states a savings clause; that is, it provides that the remedies provided for explicitly in the Act do not stop the State or any person from pursuing existing remedies at equity, or common law, or statutory law to suppress nuisances, abate pollution, or recover damages resulting from such pollution.

- (b) In conjunction with the above stated remedies available to the Commissioner, the Commissioner is authorized to receive and act upon a written and signed complaint of any person alleging violations of a provision or provisions of the Act by another person, in the manner set forth in Section 70-340(a) of the Act. The Commissioner may or may not act upon the complaint, depending upon his determination of it. The Commissioner shall determine whether any action shall be taken as a result of the complaint after making his own finding with respect to the facts alleged in the complaint, but in all instances he shall notify the complainant of his determination within ninety (90) days. Should the Commissioner wish to act, he may choose any one of the remedies detailed in 2(a) above. Should either the complainant or defendant wish to appeal the Commissioner's action to the Board as set forth in Section 70-340(a) of the Act, said person shall make written petition to the Board, filed with the Commissioner in duplicate, and shall state in numbered paragraphs the action sought of the Commissioner, the Commissioner's determination, and supporting reasons why the Commissioner's determination and/or action should be overruled. The Department or any of its personnel therein, shall not be obligated to assist a complainant toward preparing his case.
- (c) The Commissioner is not obligated to pursue an administrative remedy prior to pursuing a judicial remedy. The only exception to this course of action is that the Commissioner may not pursue a right of action or remedy in existing common law or statutory law as provided for in Section 70-340(b) of the Act, where there is an administrative question involved. For the purpose of these Regulations, an administrative question is defined as involving a matter which may be actionable at common law, but due to enactment of the Water Quality Control Act, the Commissioner of Public Health has been granted power and authority to take action thereon. The purpose of this exception is to insure that rights of action and/or remedies in existing common law and statutory law shall not be inconsistent with the provisions of this Act.

Authority: T.C.A. §70-328(a). **Administrative History:** Original Rule certified June 7, 1974. Amendment filed November 25, 1977; effective December 26, 1977.

1200-4-1-.05 PERMITS, PURPOSE, APPLICATION, WHEN ISSUED, ACTION:**(1) Purpose of a Permit**

A permit is designed to allow the holder thereof to discharge waste into a State water only after strict compliance with conditions and effluent criteria stated on the face of the permit. Section 70-330(a) and (b) of the Act explicitly state when a permit is required, and what activities shall be unlawful without a permit.

(2) Application, Issuance**(a)**

1. Any person who plans to engage or is engaging in any of the activities outlined in Section 70-330(b) or (c) of the Act must make application in writing to the Commissioner for a permit, or for modification of an existing permit; except where a person discharges into a publicly owned sewerage system or into a septic tank connected only to a subsurface drainfield.
2. Applicants must complete and submit standard application forms supplied by the Commissioner together with such engineering reports, plans and specifications as are required. The Commissioner may subsequently request additional reasonable information as required in order to make the permit decision. If an environmental impact statement is required by Federal regulation, the Commissioner may require the applicant to pay for its preparation. Processing of an application shall not be completed until all requested information has been supplied. The applicant will be provided notice of completeness of the application and re-submitted material.
3. Completed applications for new source discharges or for substantial changes in the nature, volume or frequency of existing permitted discharges must be submitted no later than 180 days in advance of the date on which the discharge is to commence or change, unless permission for a later application date has been granted by the Commissioner. Processing of an application shall be completed within 180 days after receipt of a complete application.
4. An application submitted by a corporation must be signed by a principal executive officer of at least the level of vice president, or his duly authorized representative, if such representative is responsible for the overall operation of the facility from which the discharge described in the application form originates. In the case of a partnership or a sole proprietorship the application must be signed by a general partner or the proprietor respectively. In the case of a municipal, State, Federal or other public facility, the application must be signed by either a principal executive officer, ranking elected official, or other duly authorized employee.
5. The Commissioner may agree with the Regional Administrator on the exchange of completed applications and other information.

(3) Notice and Public Participation

- (a) Each completed application shall be evaluated and a tentative determination of whether to issue or deny a permit shall be made. If a tentative determination is made to issue a permit then a draft permit shall be prepared that includes proposed effluent limitations, a proposed schedule of compliance, including interim dates and requirements, and a brief description of any other proposed special conditions.

(Rule 1200-4-1-.05, continued)

- (b) In addition, if the proposed discharge has a total volume of more than 500,000 gallons on any day of the year, the Commissioner shall prepare a fact sheet that includes:
 - 1. A sketch or detailed description of the location of the discharge described in the application;
 - 2. A quantitative and qualitative description of the discharge described in the application which includes at least the following:
 - (i) The rate or frequency of the proposed discharge; if the discharge is continuous, the average and maximum daily flow in gallons per day or million gallons per day;
 - (ii) For thermal discharges subject to limitation the average and maximum summer and winter temperature, and
 - (iii) The average and maximum daily discharge in pounds per day and concentrations in milligrams per liter of any pollutants which are present in significant quantities or which are subject to limitations or prohibition under described provisions of the Act or this rule; and
 - (iv) Other parameters for which control may be required by the Commissioner.
 - 3. The tentative determination regarding the discharge;
 - 4. A brief citation, including a brief identification of the uses for which the receiving waters have been classified, of the water quality standards and effluent standards and limitations applied to the proposed discharge; and
 - 5. A fuller description of the procedures for the formulation of final determinations than that given in the public notice including:
 - (i) The 30-day comment period required by 1200-4-1-.05(3)(f);
 - (ii) Procedures for requesting a public hearing and the nature thereof; and
 - (iii) Any other procedures by which the public may participate in the formulation of the final determinations.
- (c) In order to inform interested and potentially interested persons of the proposed discharge and of the tentative determinations regarding it, public notice shall be circulated within the geographical area of the proposed discharge by any of the following means:
 - 1. Posting in the post office and public places of the municipality nearest the premises of the applicant in which the effluent source is located; or
 - 2. Posting near the entrance to the applicant's premises and in nearby places; or
 - 3. Publishing in local newspapers and periodicals, or, if appropriate, in a daily newspaper of general circulation;
- (d) Public notice of applications shall include the following:
 - 1. Name, address, phone number of the Division;
 - 2. Name and address of each applicant;

(Rule 1200-4-1-.05, continued)

3. Brief description of each applicant's activities or operations which result in the discharge described in the application (e.g., municipal waste treatment plant, steel manufacturing, drainage from mining activities);
 4. Name of waterway to which each discharge is made and a short description of the location of each discharge on the waterway indicating whether such discharge is a new or an existing discharge;
 5. A statement of the tentative determination to issue or deny a permit for the discharge described in the application;
 6. A brief description of the procedures for the formulation of final determinations, including the 30-day comment period required by 1200-4-1-.05(3)(f) and any other means by which interested persons may influence or comment upon those determinations; and
 7. Address and phone number of the premises at which interested persons may obtain further information, request a copy of the draft permit, request a copy of the fact sheet and inspect and copy forms and related documents.
- (e) A copy of the public notice and fact sheet shall be sent to any person who specifically requests one. In addition a copy shall be sent to any state whose waters may be affected by the discharge, to any interstate agency having water quality control authority over affected waters, to the appropriate District Engineer of the Army Corps of Engineers, to the appropriate Section 208 planning agency, and to other interested Federal or State agencies. If so requested, the State or Interstate agency shall be provided with a copy of the permit application and a copy of the proposed Permit. The Commissioner and the District Engineer may modify the latter requirement by written agreement, a copy of which shall be forwarded to the Regional Administrator. The Commissioner shall send a copy of each notice of application and accompanying fact sheet within the state or a certain geographical area thereof to those persons who have requested the addition of their names to a mailing list. The Commissioner may annually purge the mailing list of those persons who do not renew their requests.
- (f) Interested persons may submit written comments on the tentative determinations within either 30 days of public notice or such greater period as the Commissioner allows. All written comments submitted shall be retained and considered in the final determination. The Commissioner shall give those states and interstate agency whose waters will be affected a written explanation of the decision not to incorporate any written recommendation made by that state.
- (g) Interested persons may request in writing that the Commissioner hold a public hearing on any application. The request must be filed within the period allowed for public comment and must indicate the interest of the party filing it and the reasons why a hearing is warranted. If there is a significant public interest in having a hearing, the Commissioner shall hold one in the geographical area of the proposed discharge. Instances of doubt should be resolved in favor of holding the hearing. The public hearing may be consolidated with any hearing before the Permit Hearing Panel requested pursuant to Section 70-328(b) of the Act.
- (h) No less than 30 days in advance of the hearing, public notice of it shall be circulated at least as widely as was notice of the application. Procedures for the circulation of public notice for hearings shall include the following:
1. Publication in a newspaper of general circulation within the geographical area of the discharge; and

(Rule 1200-4-1-.05, continued)

2. Sending notice to all persons who received a copy of the notice or fact sheet for the application and any person who specifically requests a copy of the notice of hearing.
- (i) Each notice of a public hearing shall include at least the following Contents:
1. Name, address, and phone number of the Division;
 2. Name and address of each applicant whose application will be considered at the hearing;
 3. Name of waterway to which each discharge is made and a short description of the location of each discharge on the waterway;
 4. A brief reference to the public notice issued for each application, including identification number and date of issuance;
 5. Information regarding the time and location for the hearing;
 6. The purpose of the hearing;
 7. A concise statement of the issues raised by the persons requesting the hearing;
 8. Address and phone number of premises at which interested persons may obtain further information, request a copy of each draft permit, request a copy of each fact sheet, and inspect and copy forms and related documents; and
 9. A brief description of the nature of the hearing, including the rules and procedures to be followed.
- (4) Terms and Conditions of Permits
- (a) Some discharges or activities may not be entitled to a permit. When a permit is granted it shall be subject to the provisions of Sections 70-324 through 70-342, Tennessee Code Annotated, these regulations, and any special terms or conditions the Commissioner determines are necessary to fulfill the purposes or enforce the provisions of Sections 70-324 through 70-342, Tennessee Code Annotated.
- (b) No permits shall be issued authorizing any of the following discharges:
1. The discharge of any radiological, chemical, or biological warfare agent or high-level radioactive waste into waters;
 2. Any discharge which the Secretary of the Army acting through the chief of engineers finds would substantially impair anchorage and navigation;
 3. Any discharge to which the Regional Administrator has objected in writing in a timely fashion according to Section 402(d)(2), FWPCA.
 4. Any discharge from a source with effluent limitations less stringent than those included in an approved areawide waste treatment management plan.
- (c) The terms and conditions of each permit shall insure compliance with applicable effluent limitations, including schedules of compliance, promulgated by the Board. If more stringent effluent limitations are necessary to implement applicable water quality standards, to avoid

(Rule 1200-4-1-.05, continued)

conflict with an approved areawide waste treatment management plan, or to comply with other State or Federal laws or regulations, then they should be imposed in the permit.

- (d) In the application of effluent standards and limitations, water quality standards, and other legally applicable requirements, the Commissioner may, for each issued permit, specify average and maximum daily quantitative limitations for the level of pollutants in the authorized discharge in terms of weight (except pH, temperature, radiation, and any other pollutants not appropriately expressed by weight). The Commissioner may, in addition to the specifications of daily quantitative limitations by weight, specify daily average and daily maximum concentration limits for those pollutants subject to limitation. In addition, limitations expressed in other terminology may be required when necessary to protect water quality or to describe adequate operation of a treatment facility.

(e)

1. Each permit for a discharge that is not in compliance with applicable effluent limitations shall contain a schedule of compliance. If no legally applicable schedule of compliance has been promulgated by the Board, the Commissioner shall require compliance in the shortest, reasonable period of time, which is consistent with the guidelines and requirements of the Act.
2. In any case where the period of time for compliance specified in paragraph (1) of this section exceeds 9 months, a schedule of compliance shall be specified in the permit which will set forth interim requirements, i.e., progress reports and the dates for their achievement; in no event shall more than 9 months elapse between interim dates. If the time necessary for completion of the interim requirement (such as the construction of a treatment facility) is more than 9 months and is not readily divided into stages for completion, interim dates shall be specified for submission of reports of progress towards completion of the interim requirements. For each permit schedule of compliance, interim dates and the final date for compliance shall, to the extent practicable, fall on the last day of the months of March, June, September, and December.
3. Either before or up to fourteen (14) days following each interim date and the final date of compliance the permittee shall provide the Commissioner with written notice of the permittee's compliance or noncompliance with the interim or final requirement.
4. On the last day of the months of February, May, August, and November the Commissioner shall transmit to the Regional Administrator a list of all instances, as of 30 days prior to the date of such report, of failure or refusal of a permittee to comply with an interim or final requirement or to notify the Commissioner of compliance or noncompliance with each interim or final requirement (as required pursuant to paragraph (e)(2) of this section). Such list shall be available to the public for inspection and copying and shall contain at least the following information with respect to each instance of noncompliance;
 - (i) Name and address of each noncomplying permittee;
 - (ii) A short description of each instance of noncompliance;
 - (iii) A short description of any actions or proposed actions by the permittee or the Commissioner to comply or enforce compliance with the interim or final requirement; and
 - (iv) Any details which tend to explain or mitigate an instance of noncompliance with an interim or final requirement.

(Rule 1200-4-1-.05, continued)

5. If a permittee fails or refuses to comply with an interim or final requirement in a permit such noncompliance shall constitute a violation of the permit, for which the Commissioner may take enforcement action or after notice and opportunity for hearing, modify, suspend or revoke the Permit.

(f)

1. Any discharge or activity authorized by a permit shall be subject to such monitoring requirements as may be required by the Commissioner including the installation, use and maintenance of monitoring equipment or methods by the permittee (including, where water quality may be a problem and such is appropriate, biological evaluation and monitoring methods). In addition the Commissioner may require monitoring by users of publicly owned treatment works, where adequate monitoring is not otherwise provided.
2. Any discharge or activity authorized by a permit which is not a minor discharge, or the Regional Administrator requests, in writing, be monitored, or contains a toxic pollutant for which an effluent standard has been established shall be monitored by the permittee for the following:
 - (i) Flow (in gallons per day); and
 - (ii) Any of the following pollutants:
 - (I) Pollutants (either directly or indirectly through the use of accepted correlation coefficients or equivalent measurements determined to be applicable to the discharge to which they are applied) which are subject to reduction or elimination under the terms and conditions of the permit;
 - (II) Pollutants which the Commissioner finds, on the basis of information available to him, could have a significant impact on the quality of waters;
 - (III) Pollutants specified by the Administrator, in regulations issued pursuant to the Federal Water Pollution Control Act, as subject to monitoring; and,
 - (IV) Any pollutants in addition to the above which the Regional Administrator or the Commissioner request, in writing, be monitored.
3. Each effluent flow or pollutant required to be monitored pursuant to this section shall be monitored at intervals sufficiently frequent to yield data which reasonably characterizes the nature of the discharge of the monitored effluent flow or pollutant. Variable effluent flows and pollutant levels may be monitored at more frequent intervals than relatively constant effluent flows and pollutant levels which may be monitored at less frequent intervals;
4. The permittee shall maintain records of all information resulting from any monitoring activities required of him in his permit;
5. Any records of monitoring activities and results shall include for all samples: (i) The date, exact place, and time of sampling; (ii) the dates analyses were performed; (iii) who performed the analyses; (iv) the analytical techniques/methods used; and (v) the results of such analyses;
6. The permittee shall retain for a minimum of 3 years any records of monitoring activities and results including all original strip chart recording for continuous monitoring

(Rule 1200-4-1-.05, continued)

instrumentation and calibration and maintenance records. This period of retention shall be extended during the course of any unresolved litigation regarding the discharge of pollutants by the permittee or when required by the Commissioner or Regional Administrator; and

7. The permittee shall periodically report, as required by the Commissioner (at a frequency of not less than once per year), on the results obtained pursuant to monitoring requirements. Monitoring results shall be reported in the form requested by the Commissioner.
- (g) If the permit is for the discharge of pollutants from a vessel or other floating craft, the permit shall insure compliance with any applicable regulations promulgated by the Secretary of the department in which the Coast Guard is operating, establishing specifications for safe transportation, handling, carriage, storage, and stowage of pollutants.
- (h) In addition to the above, the terms and conditions of each issued permit must provide for and insure the following:
 1. That all discharges authorized by the permit shall be consistent with the terms and conditions of the permit; that facility expansions, production increases, or process modifications which result in new or increased discharges of pollutants must be reported by submission of a new application or, if such discharge does not violate effluent limitations specified in the permit, by submission to the Commissioner of notice of such new or increased discharges of pollutants; that the discharge of any pollutant more frequently than or at a level in excess of that identified and authorized by the permit shall constitute a violation of the terms and conditions of the permit;
 2. That the permit may be modified, suspended, or revoked after public notice and opportunity for hearing in whole or in part during its term for cause including, but not limited to, the following:
 - (i) Violation of any terms or conditions of the permit;
 - (ii) Obtaining a permit by misrepresentation or failure to disclose fully all relevant facts; and
 - (iii) A change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge;
 3. That the permittee shall permit the Commissioner or his authorized representative, upon the presentation of his credentials:
 - (i) To enter upon permittee's premises in which an effluent source is located or in which any records are required to be kept under terms and conditions of the permit;
 - (ii) To have access to and copy any records required to be kept under terms and conditions of the permit;
 - (iii) To inspect any monitoring equipment, sources of wastes, collection and treatment works or method or condition required in the permit; and,
 - (iv) To sample any waters or discharge of pollutants.

(Rule 1200-4-1-.05, continued)

4. That, if the permit is for a discharge from a publicly owned treatment works, the permittee shall provide notice to the Commissioner of the following:
 - (i) Any new introduction of pollutants into such treatment works from a source which would be a new source subject to new Source Performance Standards if such source were discharging pollutants;
 - (ii) Except as to such categories and classes of sources or discharges specified by the Commissioner, any new introduction of pollutants into such treatment works from a source which would be required to obtain a permit if such source were discharging pollutants; and,
 - (iii) Any substantial change in volume or character of pollutants being introduced into such treatment works by a source introducing pollutants into such works at the time of issuance of the permit.

Such notice shall include information on (i) the quality and quantity of effluent to be introduced into such treatment works and (ii) any anticipated impact of such change in the quantity or quality of effluent to be discharged from such publicly owned treatment works.

5. That if the permit is for a discharge from a publicly owned treatment works, the permittee shall require all industrial users of such treatment works to pay applicable user charges, to comply with applicable toxic effluent limitations, to comply with pretreatment standards, and to comply with monitoring requirements. As a means of insuring such compliance, the permittee shall require each industrial user subject to these requirements to make periodic reports, over intervals not to exceed 9 months, of progress towards full compliance. A copy of each report shall be forwarded to the Commissioner.
6. That the permittee at all times shall maintain in good working order and operate as efficiently as possible any facilities or systems of control installed by the permittee to achieve compliance with the terms and conditions of the permit.
7. That if a toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is established for a toxic pollutant which is present in the permittee's discharge and such standard or prohibition is more stringent than any limitation upon such pollutant in the permit, the Commissioner shall revise or modify the permit in accordance with established procedure to include the toxic effluent standard or prohibition and so notify the permittee.

(5) Duration and Reissuance of Permits

- (a) Each issued permit shall have a fixed term not to exceed 5 years which shall be stated in the permit.
- (b) Any permittee who wishes to continue to discharge after the expiration date of his permit must apply for reissuance at least 180 days prior to its expiration. The filing requirements shall be determined by the Commissioner and may range from a simple written request to submission of complete NPDES application forms.
- (c) The Commissioner shall review the permit and other available information to insure:
 1. That the permittee is in compliance with or has substantially complied with all terms, conditions, requirements, and schedules of compliance of the expired permit;

(Rule 1200-4-1-.05, continued)

2. That the Commissioner has up-to-date information on the permittee's production levels, permittee's waste treatment practices, nature, contents, and frequency of permittee's discharge, either pursuant to monitoring records and reports submitted to the Commissioner by the permittee; and
 3. That the discharge is consistent with applicable effluent standards and limitations, water quality standards, and other legally applicable requirements including any additions to, or revisions or modifications of such effluent standards and limitations, water quality standards, or other legally applicable requirements during the term of the permit.
- (d) The Commissioner shall follow the procedures for notice and public participation specified in Regulation 1200-4-1-.05(3) regarding each application for reissuance of a permit.
- (e) Each permit that is reissued shall be consistent with prevailing laws and regulations.
- (6) Review of Permit Denials, Terms and Conditions

Permittees and applicants for permits who disagree with the denial, terms, or conditions of a permit are entitled to review of the Commissioner's decision by the Permit Hearing Panel pursuant to Section 70-328(b) of the Act. Any action by the Commissioner regarding a previously issued permit other than action regarding its reissuance, such as modification or revocation of an existing permit, may only be reviewed by the Board.

(7) Adoption and Enforcement of NPDES Permits

The Commissioner may adopt and enforce permits that have been previously issued by the United States Environmental Protection Agency under the National Pollutant Discharge Elimination System established by Public Law 92-500. When such NPDES permit previously issued by the Environmental Protection Agency has been adopted by the State of Tennessee, any Permit issued previously for the same discharge by the Commissioner shall become null and void. In any instance where the Commissioner has not adopted an existing NPDES permit and a discharge is not authorized by a Tennessee permit, the Commissioner may require the discharger to apply for a Tennessee permit and otherwise comply with Tennessee law. Permits previously issued pursuant to Section 70-330 of the Act shall remain in full force and effect until replaced by an NPDES Permit transferred to the State or issued by the State.

Authority: T.C.A. §70-328(a). **Administrative History:** Original Rule certified June 7, 1974. Amendment filed November 25, 1977; effective December 26, 1977.

1200-4-1.06 STAFF ATTORNEYS

The staff attorney(s) appointed pursuant to Section 70-329, Tennessee Code Annotated, shall work with the Division Staff and perform such legal duties as assigned or directed by the Division Director. In accordance with Section 70-334, Tennessee Code Annotated, the attorney(s) will represent the Division in all hearings before the Board or Panel and before civil courts of law or equity under the supervision of the Attorney General and work with various District Attorneys General in criminal prosecution of any persons in violation of the Act. The primary function of the staff attorney(s) while appearing before the Board, or Panel, as representative of the Division, will be to act as prosecutor in the enforcement of the Act. In such capacity the staff attorney shall not act as legal advisor to the Board or Panel on any matter that might arise during the course of the hearing.

Authority: T.C.A. §70-328(a). **Administrative History:** Original Rule certified June 7, 1974. Amendment filed November 25, 1977; effective December 26, 1977.

1200-4-1.07 INFORMATION - PROCUREMENT, RELEASE AND DISTRIBUTION

Section 70-335 of the Act provides authority to the Board or Commissioner to seek and obtain pertinent information about pollution to be used in aiding water quality control. The following regulations shall serve to implement that Section.

(a) Waters

The provisions in Section 70-335 of the Act shall apply to both intrastate and interstate waters, and to all other waters as defined in Section 70-326 (cc) of the Act.

(b) Release and Distribution

1. All information compiled by the Division of Water Quality Control and recorded in its offices, is public information, except any information which has been declared by the Board or the Commissioner as representing or revealing a secret process, information, formula or method. The Commissioner shall not divulge information claimed to be confidential unless he first notifies the supplier of such information that it has been requested and offers the supplier opportunity to defend such classification. Information so declared shall be considered classified, and shall be placed in a security file. In any event, such information shall not, for any reason, be available to persons other than Board members, the Commissioner, and staff of the Division of Water Quality Control. Provided, however, that any classified information shall be made available to the Regional Administrator, and the Commissioner shall divulge to the public any of that information the Regional Administrator finds is not entitled to protection as a trade secret.
2. All other recorded information will be available to the public pursuant to the following conditions:
 - (i) During normal office hours
 - (ii) Under the observation of a member of the staff of the Division of Water Quality Control
 - (iii) Copies of compiled records and information will be made available upon request at a cost of \$0.50 per page
 - (iv) No recorded information shall be removed from the offices of the Division, except as provided herein.
3. Records of public hearings shall be made available to parties to such hearing free of charge, except where said records are out of print. In such case, records will be made available to such parties at a cost of \$0.50 per page. In a public hearing, any interested person attending will be considered a party to the hearing. With regard to all other persons, copies of said records will be made available at a cost of \$0.50 per page.
4. Copies of general information material will be provided at no charge. Such material includes the Water Quality Control Act, Regulations adopted and approved by the Board, Annual Reports, leaflets, pamphlets and other similar educational materials available in multiple copies. When the supply of such materials is depleted, copies thereof for distribution will not be made by use of office duplicating equipment. A furnishing of such materials shall be delayed until another printing.
5. All charges for copies of records and information provided for herein, shall be prepaid and payable to the Tennessee Department of Public Health.

(Rule 1200-4-1-.07, continued)

Authority: T.C.A. §70-328(a). **Administrative History:** Original Rule certified June 7, 1974. Amendment filed November 25, 1977; effective December 26, 1977.